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Examined

File No. B.R.T.A. (Bel.) /41

Legal DEPARTMENT

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Subject :—

Appeals to the Bombay Revenue Tribunal.

Belgaum Dist.

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Review of order No.O.426 of 1940, dated 7th October 1940, of the Bombay Revenue Tribunal.

No.O.111 of 1941,
Bombay, 22nd April 1941.

Read:-

Order No.426 of 1940, dated 6th January 1941, of the Bombay Revenue Tribunal.

Opinion, dated 18th April 1941,(No.B.R.T.43), of the Commissioner,S.D. and Member, Bombay Revenue Tribunal.

Opinion, dated 19th April 1941, of Dewan Bahadur C.M. Gandhi,Member, Bombay Revenue Tribunal.

Opinion, dated 22nd April 1941, of Sir Govind Madgavkar, President, Bombay Revenue Tribunal.

O r d e r.

In this case after our order No.O.426 of 1940, dated 7th October 1940, was passed, we deemed it proper to issue notice to Government and to the parties to consider the question of our jurisdiction which finds no place in the order and was not raised by the opponent.

2. Under section 7(1) of the Bombay Revenue Tribunal Act, No.XII of 1939, this Tribunal has ample powers to review its decision suo motu and it is under these powers this review application may be considered. The facts are stated in the order and shortly put the question in the appeal of Annappa Rama Mahar was as regards maharki inam lands claimed by the appellant on the one hand and Fakira and Maya on the other. Both were watandar mahars and the appellant was the purchaser from the predecessor-in-title of the respondents. The respondents applied for restoration of the lands from the appellant on the ground that they were performing services as watandar mahars. The application was rejected by the Prant Officer but was allowed in appeal by the Collector, who directed that the full rental of the land should be recovered from the present appellant Annappa and paid to the respondents in respect of the area sold by them to him. In appeal from the Collector's order, this Tribunal set aside that order and restored

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the order of the Prant Officer. The question is whether this was or was not a revenue case within our jurisdiction.

3. Yellappa, the son and heir of the deceased Sakri, is present in person. Mr. Mundargi of the Chikodi bar appears for the other respondent Fakira. The appellant is absent. The Government pleader, Mr. R.A.Jahagirdar, appears for Government.

4. The main argument for Government is that under section 296 and section 136 of the Government of India Act, read in conjunction with section 3(2) of the Bombay Revenue jurisdiction Act X of 1876, the question was purely between two mahars. Government is not an interested party and the increased amount in the shape of rent ordered by the Collector to be levied from the appellant was to be paid over to the respondents, Government retaining no more and no less than before. This is, therefore, not a revenue case within the jurisdiction of this Tribunal. Mr. Mundargi accepts these arguments and does not add to them.

5. It is, however, undeniable and it is not denied that the Government demand on the lands from the appellant, if his possession was to continue, was increased even though the ultimate destination of the increase was not Government but was the opposite party. To the appellant, the destination of the increase is a matter of indifference. What interests him is the increase in the demand by Government. This increased demand, in our opinion, suffices to constitute a revenue case irrespective of the ultimate destination of the increase and whether Government retained it themselves or called it nuksan or whether they paid it over to the respondents.

6. Government is financially interested in these restoration cases because if the alienees are not made to return land or pay rent, Government will have to remunerate the village servants at the cost of the general revenue and this Tribunal has consistently

held

held that cases which involve the resumption of land from or payment of rent by alienees of service land are revenue cases. Neither in section 136 of the Government of India Act of 1935 nor in section 3(2) of the Bombay Revenue Jurisdiction Act of 1876 is the term 'revenue' confined to amounts which Government raise for themselves, as is in fact the basis of the argument of the learned Government pleader. The demand by Government on the appellant according to the order of the Collector is a revenue demand and he is entitled to challenge it before this Tribunal. The defence of Government that the demand is made not on their own behalf but for payment to a third party makes it none the less a revenue demand and the case a revenue case within our jurisdiction.

7. In the result, therefore, we are of opinion that this is a revenue case within our jurisdiction and there is no sufficient reason to review this Tribunal's order No.O.426 of 1940, dated 7th October 1940.

G.D.Madgavkar,
President,
Bombay Revenue Tribunal.

E.W.Perry,
Commissioner,S.D. and Member,
Bombay Revenue Tribunal.

C.M.Gandhi,
Member,
Bombay Revenue Tribunal.

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No.426 of 1940:
Poona, 7th October 1940.

Read:

Appeal petition, dated the 16th November 1939, of Annappa Rama Mahar of Ingli, Taluka Chikodi, District Belgaum.

Opinion, dated the 21st August 1940, (No.B.R.T.43), of the Commissioner, S.D., and Member, Bombay Revenue Tribunal.

Opinion, dated the 26th August 1940, of Dewan Bahadur C.M. Gandhi, Non-Official Member, Bombay Revenue Tribunal.

Opinion, dated the 7th October 1940, of Sir Govind Madgavkar, President, Bombay Revenue Tribunal.

Case papers.

Order.

This is an appeal by Annappa Rama Mahar of Ingli, Taluka Chikodi, District Belgaum, against the Order of the Collector of Belgaum, No.W.T.P.2030 and 2031, dated the 31st of August 1939, allowing the appeal of Fakira and Sakri against the order of the Assistant Collector dated the 12th July 1938.

2. Both the parties are Watandar Mahars of the village of Ingli. They perform service by turns in accordance with arrangements made inter se. On the 17th of October 1931, the Appellant, Annappa took two registered sale-deeds for consideration, one for S.No.354/9 from Fakira and Maya, the father of Sakri, and the other for S.No.354/8 from Sakri and her son Yallya with the consent of Maya and Fakira. Both these lands are Maharki Inam lands. On the 31st of July 1937, in Civil Suit No.617 of 1933 in the Court of the Joint Subordinate Judge at Chikodi, the Appellant obtained a permanent injunction restraining the defendants, who purported to be the tenants of Fakira, from obstructing the Appellant Annappa in the enjoyment of these two lands though he held that the title of Annappa to one was that of owner but of the other was rather that of a mortgagee. But from the point of view of the present appeal the important issue was issue No.2:"Do Defendants prove that the suit property is inalienable and on that account Plaintiff's title bad?" On this issue the finding was: "No," on the ground that "Plaintiff's vendor not being representative Watandars but being simple Watandars and Plaintiff also being a Watandar of the same Watan the sale-deeds of the Plaintiff are not illegal and void on account of Section 5 of the Watan Act as contended by Defendant No.1."

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3. Fakira and Sakri thereafter applied to the Mamlatdar for restoration of the lands from the Appellant on the ground that they were performing services as Watandar Mahars. That application was rejected by the Prant Officer on the 12th July 1938 on the ground that Annappa was also a Maharki Watandar doing the work of Maharki which "belongs to all the Mahars of the village". In appeal by Fakira and Sakri, however, the Collector set aside the order of the Prant Officer on the 31st of August 1939 on the ground that "the Vendors are actually performing service and it is essential that they should receive remuneration", and he, therefore, directed that "under Section 12 of the Watan Act the full rental of the lands as determined by the Prant Officer should be recovered from the respondent (i.e. Annappa) and paid to the Appellants(Fakira and Sakri) in respect of the areas sold by them to him". Annappa now appeals to this Tribunal.

4. Notice was issued to the Opponents, who have put in written statements.

5. The order of the Prant Officer was, in our opinion, right. The officiator, under Section 7 of the Watan Act, is the body of Watandar Mahars of the village and not Fakira and Sakri alone nor Annappa alone. Each constitutes a part of the officiating body. Fakira and Sakri are not representative Watandars and Section 5 of the Watan Act does not apply. The alienation of land to Annappa by another part of the officiating body, such as Fakira and Sakri, is not in contravention of Sections 5 or 7 of the Watan Act and is not illegal. For the same reason, Sections 8,9,11 and, therefore, Section 12 have no application.

6. The appeal is allowed, the order of the Collector of Belgaum, No.W.T.P.2030 and 2031, dated the 31st August 1939, is set aside and the order of the Prant Officer dated the 12th July 1938 in Restoration case No.67 and 68 of 1938 on his file declining to restore the lands to Sakri and Fakira is confirmed.

G.D.Madgavkar,
President,
Bombay Revenue Tribunal.

K.M.Gandhi,
Member,
Bombay Revenue Tribunal.

E.W.Perry,
Commissioner,S.D. and Member,
Bombay Revenue Tribunal.

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